



## INTERIOR BOARD OF INDIAN APPEALS

Johnny Begay; Janet Gordon; Leo Green; Thomas Kee; Lester Kelwood;  
Juanita Paddock; Irma Shirley; Charity Tsosie; Francis Yazzie  
v. Acting Navajo Area Director, Bureau of Indian Affairs

12 IBIA 107 (12/09/1983)

Judicial review of this case:

Compromise settlement, *Begay v. Clark*, No. CIV 84-1285-PCT-PGR  
(D. Ariz. Apr. 21, 1986)

Related Board cases:

10 IBIA 205  
10 IBIA 285  
10 IBIA 301  
10 IBIA 350  
10 IBIA 366  
10 IBIA 382  
10 IBIA 399  
10 IBIA 416  
10 IBIA 448  
11 IBIA 285

Stipulated dismissal, *Allen v. Watt*, No. CIV-83-1921-PCT-WPC  
(D. Ariz. June 4, 1985)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

JOHNNY BEGAY

v.

ACTING AREA DIRECTOR, NAVAJO AREA OFFICE,  
BUREAU OF INDIAN AFFAIRS <sup>1/</sup>

IBIA 82-14-A, etc.

Decided December 9, 1983

Consolidated appeals from decisions of the Navajo Area Director, Bureau of Indian Affairs, terminating financial assistance to appellants.

Plan approved; appeals dismissed.

1. Res Judicata

A settlement agreement is final and conclusive of all issues relating to the controversy.

APPEARANCES: Stephen LeCuyer, Esq., DNA-Peoples' Legal Services, Inc., Shiprock, New Mexico, for appellants; Penny Coleman, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for appellee. Counsel to the Board: Kathryn A. Lynn.

## OPINION BY ADMINISTRATIVE JUDGE MUSKRAT

Appellants in the above-named consolidated cases are all Navajo Indians who were receiving care and training funded by the Bureau of Indian Affairs (BIA) at Toyei Industries (Toyei), Toyei, Arizona. This assistance was terminated effective January 12, 1981, on the grounds that appellants were not eligible for custodial care assistance under the provisions of 66 BIAM (Bureau of Indian Affairs Manual) 5.10A. The decisions found that appellants did not require care from others in daily living due to age, infirmity,

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<sup>1/</sup> The Board hereby consolidates the following cases with Begay: Janet Gordon v. Area Director, Navajo Area Office, Bureau of Indian Affairs, Docket No. IBIA 82-20-A; Leo Green v. Area Director, Navajo Area Office, Bureau of Indian Affairs, Docket No. IBIA 82-21-A; Thomas Kee v. Area Director, Navajo Area Office, Bureau of Indian Affairs, Docket No. IBIA 82-24-A; Lester Kelwood v. Area Director, Navajo Area Office, Bureau of Indian Affairs, Docket No. IBIA 82-25-A; Juanita Paddock v. Area Director, Navajo Area Office, Bureau of Indian Affairs, Docket No. IBIA 82-26-A; Irma Shirley v. Area Director, Navajo Area Office, Bureau of Indian Affairs, Docket No. IBIA 82-27-A; Charity Tsosie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, Docket No. IBIA 82-28-A; and Francis Yazzie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, Docket No. IBIA 82-30-A.

physical or mental impairment. Each appellant sought review of this decision by the Navajo Area Director, BIA, and the Deputy Assistant Secretary--Indian Affairs (Operations) (Deputy Assistant Secretary). When the Deputy Assistant Secretary did not render a decision in appellants' cases within the 30-day time period established in 25 CFR 2.19, appellants sought and obtained review by the Board of Indian Appeals (Board).

In decisions dated October 15, 1982, the Board found, inter alia, that appellants' assistance had been improperly terminated by reference to a rule published only in the BIA Manual in violation of 5 U.S.C. § 552 (1976) and Morton v. Ruiz, 415 U.S. 199 (1974). The Board ordered BIA to develop a plan to implement the holdings, and retained jurisdiction over the appeals to review the BIA plan. <sup>2/</sup>

Under the plan submitted by BIA, appellants continue to receive care and training at Toyei. The plan further provides for the payment of a negotiated sum to Toyei for appellants' past care. This sum has been paid in full to Toyei by BIA. See Order Acknowledging Disbursement of Settlement Payment (IBIA, Aug. 23, 1983).

Appellants have each indicated that they do not object to the plan submitted by BIA. They have, however, expressed concern over the following statement made in a March 23, 1983, memorandum from the Navajo Area Director to the Deputy Assistant Secretary: "In the process of Bureau reviews of appellant social services records, it was discovered that several appellants received General Assistance payments during their stay at the Toyei facility. This information will be conveyed to the Bureau of Indian Affairs Field Solicitor to determine disposition." The memorandum does not indicate which appellants might be affected by the conveyance of this information.

Appellants requested identification of any remaining dispute over their receipt of care or general assistance payments while at Toyei. The BIA replied that it was aware of no instance in which an individual appellant was receiving direct general assistance payments while also receiving custodial care at Toyei. The BIA further stated, however, that if it should become aware of an overpayment in the future, it would be required to seek reimbursement of the amount of the overpayment.

[1] By the very nature of a settlement agreement, all relevant issues concerning payments to appellants or to Toyei for services rendered to appellants are regarded as having been considered during the negotiations. The potential for overpayment was, in fact, raised at the time the negotiations were in progress. The BIA subsequently agreed to the settlement and paid the

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<sup>2/</sup> See Yazzie v. Navajo Area Director, 10 IBIA 448 (1982); Tsosie v Navajo Area Director, 10 IBIA 416 (1982); Shirley v. Navajo Area Director, 10 IBIA 399 (1982); Paddock v. Navajo Area Director, 10 IBIA 382 (1982); Kelwood v. Navajo Area Director, 10 IBIA 366 (1982); Kee v. Navajo Area Director, 10 IBIA 350 (1982); Green v. Navajo Area Director, 10 IBIA 301 (1982); Gordon v. Navajo Area Director, 10 IBIA 285 (1982); and Begay v. Acting Navajo Area Director, 10 IBIA 205 (1982).

negotiated amount with no indication to Toyei, appellants, or the Board that the amount was not conclusive of all issues and amounts in controversy. Based upon these facts and the representation that BIA is aware of no instances of overpayment, the Board finds that the settlement is final and conclusive of all issues arising from appellants' receipt of assistance during the period covered by the Board's October 15, 1982, decisions.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the above appeals are dismissed on the grounds that the issues between each of the parties and BIA have been resolved through their continued receipt of BIA assistance and through the settlement agreement between BIA and Toyei Industries, approved by the Board on August 23, 1983.

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Jerry Muskrat  
Administrative Judge

We concur:

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//original signed  
Franklin D. Arness  
Administrative Judge

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//original signed  
Bernard V. Parrette  
Chief Administrative Judge